

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAMES H. WOODS,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

FILED

MAR 20 1923

F. D. MONCKTON,
CLERK.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Arvid Franzen.....	5
Appeal and Bail Bond.....	24
Arraignment and Plea.....	7
Assignments of Error.....	19
Bill of Exceptions.....	30
Certificate of Clerk U. S. District Court to Transcript of Record.....	62
Citation on Writ of Error.....	66
Decision	13
Information	1
Motion for New Trial.....	12
Motion in Arrest of Judgment.....	11
Names and Addresses of Counsel.....	1
Order Allowing Writ of Error and Fixing Amount of Bond	23
Order Extending Time to and Including July 14, 1922, to File Bill of Exceptions.....	27
Order Extending Time to and Including Sep- tember 19, 1922, to File Record and Docket Cause	28

Index.	Page
Order Extending Time to and Including November 1, 1922, to File Record and Docket Cause	29
Order Settling Bill of Exceptions.....	58
Petition for Writ of Error.....	17
Præcipe for Transcript of Record.....	60
Sentence	15
TESTIMONY ON BEHALF OF THE GOVERNMENT:	
ANDERSON, A. G.....	35
Cross-examination	36
Redirect Examination	37
Recalled	55
BOLTON, O. R.....	53
BOWEN, R.....	33
Cross-examination	34
BUNKER, S. C.....	31
Cross-examination	32
FRANZEN, A.....	37
Cross-examination	39
Redirect Examination	43
JACOBSON, ——	52
SEMPLE, F.....	34
Cross-examination	35
STITES, A. B.....	49
Cross-examination	49
Redirect Examination	50
Recalled	56

Index.

Page

TESTIMONY ON BEHALF OF DEFEND-
ANT:

WOODS, JAMES H.....	56
Cross-examination	57
Redirect Examination	57
Trial	8
Trial—Verdict Returned	9
Verdict	10
Writ of Error	64

Names and Addresses of Counsel.

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1902-4 L. C. Smith Building, Seattle,
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THOMAS P. REVELLE, Esq., United States At-
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310 Federal Building, Seattle, Washing-
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CHARLES E. ALLEN, Esq., Assistant United
States Attorney, Attorney for Defendant in
Error,

310 Federal Building, Seattle, Washington.

[1*]

United States District Court, Western District of
Washington, Northern Division.

November, 1921, Term.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Information.

BE IT REMEMBERED, that Thomas P. Re-
velle, Attorney of the United States of America for
the Western District of Washington, who for the
said United States in this behalf prosecutes in his

*Page-number appearing at foot of page of original certified Tran-
script of Record.

own person, comes here into the District Court of the said United States for the district aforesaid on this 5th day of December, in this same term, and for the said United States gives the Court here to understand and be informed that as appears from the affidavit of Arvid Franzen made under oath, herein filed:

COUNT I.

That on the 2d day of December, 1921, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, one James H. Woods, then and there being, did then and there knowingly, wilfully and unlawfully have and possess certain intoxicating liquor, to wit, twenty-four (24) ounces of a certain liquor called distilled spirits, and one (1) quart of a certain liquor called whiskey, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, intended then and there by the said James H. Woods for use in violating the Act of Congress passed October 28, 1919, known as the [2] National Prohibition Act, by selling, bartering, exchanging, giving away and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said James H. Woods as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made

and provided and against the peace and dignity of the United States of America.

COUNT II.

And the said United States Attorney for said Western District of Washington further informs the Court that on the 2d day of December, 1921, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, one James H. Woods, then and there being, did then and there knowingly, wilfully and unlawfully sell to Arvid Franzen for beverage purposes certain intoxicating liquor, to wit, eight (8) ounces of a certain liquor called distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said sale by the said James H. Woods, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT III.

And the said United States Attorney for said Western District of Washington further informs the Court that on the [3] 2d day of December, 1921, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, one James H.

Woods, then and there being, did then and there knowingly, wilfully and unlawfully sell to Arvid Franzen for beverage purposes certain intoxicating liquor, to wit, sixteen (16) ounces of a certain liquor called distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said sale by the said James H. Woods, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT IV.

And the said United States Attorney for said Western District of Washington further informs the Court that on the 2d day of December, 1921, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, one James H. Woods, then and there being, did then and there knowingly, wilfully and unlawfully conduct and maintain a common nuisance, to wit, a certain drug-store located at 115 First Avenue, in the said City of Seattle, in the said division and district, where in intoxicating liquor containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes was kept in violation of the

Act of Congress passed October 28, 1919, known as the National [4] Prohibition Act, by using the said drug-store in which to keep such intoxicating liquor, and which maintaining of said nuisance by the said James H. Woods, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOMAS P. REVELLE,
United States Attorney.
GEORGE E. MATHIEU,
Assistant United States Attorney.

Warrant to issue.

Bail fixed \$750.00.

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 5, 1921. F. M. Harshberger, Clerk. By F. L. Crosby Jr., Deputy. [5]

Affidavit of Arvid Franzen.

United States of America,
Western District of Washington,
Northern Division,—ss.

Arvid Franzen, being first duly sworn, on oath, deposes and says: That on December 2d, 1921, at the City of Seattle, in the Northern Division of the

Western District of Washington, he purchased from one James H. Woods, who was then *and* the proprietor and owner of the Northern Drug Company, located at 115 First Avenue South in said City of Seattle, eight (8) ounces of intoxicating liquor known as distilled spirits; that he paid the said James H. Woods the sum of One Dollar (\$1.00) for the same.

That thereafter and subsequent thereto but on the same day the affiant purchased from the said James H. Woods two (2) eight-ounce bottles of intoxicating liquor known as distilled spirits, for which he paid the sum of Two Dollars and Fifty Cents (\$2.50) each, and that at such time and place the said James H. Woods had and possessed one (1) quart of intoxicating liquor known as whiskey.

That all of said intoxicating liquor then and there contained more than one-half of one per centum of alcohol by volume and was then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to affiant unknown.

That the acts hereinabove mentioned and complained of were then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act.

ARVID FRANZEN.

Subscribed and sworn to before me this 3d day of December, A. D. 1921.

[Seal U. S. Dist. Court.]

FRANK L. CROSBY, Jr.,
Deputy Clerk, U. S. District Court, Western District of Washington.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 5, 1921. F. M. Harshberger, Clerk. By F. L. Crosby, Jr. [6]

United States District Court, Western District of Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Arraignment and Plea.

Now, on this 19th day of December, 1921, the above defendant comes into court with F. C. Reagan his attorney for arraignment and says that his true name is James H. Woods. Whereupon the reading of the information is waived and he here and now enters his plea of not guilty. Trial in this cause is set for February 14, 1922.

Journal No. 9, page 444. [7]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Trial.

Now, on this 9th day of May, 1922, the above defendant comes into open court for trial accompanied by his attorney John F. Dore and with C. E. Allen, present in behalf of the Government. Whereupon all parties being ready for trial a jury is duly empaneled and sworn as follows: Truman L. Richards, Evan Espelund, George Schroder, Willis F. Pierce, F. M. Evans, Clarence A. Parks, John A. Paine, Ernest Pearse, Earle E. Sigley, Chas. E. Ross, Henry C. Rohrback, and Abraham A. Tremper. Opening statement is made to the jury for respective parties. Government witnesses are sworn and examined as follows: S. E. Bunker, R. Bowen, F. Semple, A. G. Anderson, A. Franzen, A. B. Stites, A. Jacobson, O. R. Boltin. Government Exhibits 1, 2, 3, 4, 5, 6 and 7 are introduced as evidence. Government rests. Defendant moves for dismissal of the case. Said motion is denied. Defendant's witness, James Woods is sworn and examined. Defendant's exhibits lettered "A," "B" and "C"

are introduced as evidence. Defendant rests. The jury is now instructed by the Court and retires for deliberation. It is also instructed by the Court to return a verdict of not guilty as to count IV of the information. And after further instruction by the court the jury retires and is to return a sealed verdict at 10 A. M. May 10, 1922.

Journal #10, page 150. [8]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Trial—Verdict Returned.

Now, on this 10th day of May, 1922, the above defendant and all parties being present, a verdict is returned of not guilty on Counts I, II and IV and guilty on Count III. Verdict reads as follows: "We, the jury in the above-entitled cause, find the defendant James H. Woods, not guilty, as charged in Count I of the information herein; and further find the defendant James H. Woods, not guilty as charged in Count II of the information herein; and further find the defendant James H. Woods, is guilty as charged in Count III of the information

herein; and further find the defendant James H. Woods, not guilty as charged in Count IV of the information herein. J. A. Paine, foreman.”

Journal No. 10, page 153. [9]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant James H. Woods not guilty, as charged in Count I of the information herein; and further find the defendant James H. Woods not guilty, as charged in Count II of the information herein; and further find the defendant James H. Woods is guilty, as charged in Count III of the information herein; and further find the defendant James H. Woods not guilty, as charged in Count IV of the information herein.

J. A. PAINE,

Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. May 10, 1922. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy. [10]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Motion in Arrest of Judgment.

Comes now the defendant and moves that the judgment in this cause be arrested for the following reasons:

I.

Because the verdict of not guilty on Count I amounts to an acquittal on Count III.

JOHN F. DORE,

Attorney for Defendant.

Acceptance of service of within motion acknowledged this 12 day of May, 1922.

THOS. P. REVELLE,

Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 12, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Motion for New Trial.

Comes now the defendant herein and moves for a new trial in this cause, for the following reasons:

I.

That the verdict is contrary to law and the evidence.

II.

That there was not sufficient evidence to support the verdict.

III.

Errors of law occurring at the trial and excepted to at the time.

IV.

That the verdict of guilty returned on Count III and the verdict of not guilty returned on Count I renders the verdict contradictory.

V.

That there was no evidence to support the verdict.

JOHN F. DORE,
Attorney for Defendant. [12]

Acceptance of service of within motion acknowledged this 12 day of May, 1922.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 12, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

In the District Court of the United States for the Western District of Washington, Northern Division.

CRIMINAL—No. 6431.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES H. WOODS,
Defendant.

Decision.

Filed June 2, 1922.

THOS. P. REVELLE, U. S. Attorney, and CHAS. E. ALLEN, Asst. U. S. Attorney, Attorneys for the United States.

JOHN F. DORE, Attorney for the Defendant.

NETERER, D. J.—The defendant is charged in four counts with violation of the National Prohibition Act. Count 1, charges that on the 2d day of

December, 1921, he unlawfully possessed 24 ounces of distilled spirits and one quart of whiskey, etc.; count 2, that on the same day he unlawfully sold 8 ounces of the distilled spirits, etc.; count 3, that on the same day he unlawfully sold 16 ounces of said distilled spirits, etc., both sales being made to one A. Franzen; count 4, charges the defendant with maintaining a nuisance.

Upon the trial there was testimony tending to show that the defendant is a druggist, and that he had in his possession 24 ounces of alcohol, and that at sometime during the day he sold Franzen 8 ounces of alcohol, and at another time 16 ounces of alcohol. A verdict of not guilty was directed as to count 4. The jury returned a verdict of not guilty as to counts 1 and 2, and guilty as to Count 3. The defendant has moved in arrest of judgment on the ground that a verdict of not guilty as to count 1 is an acquittal on count 3; and a motion for a new trial upon various grounds, [14] among which, that the verdict of not guilty returned on count 1 is inconsistent with the verdict of guilty on count 3. This is the only ground in the motion meriting consideration.

Count 1, charges the defendant with the unlawful possession of 24 ounces of alcohol. The defendant admitted having the alcohol, and being a druggist he could lawfully possess it, and the jury was so instructed. Counts 2 and 3 charge the unlawful selling. The defendant could lawfully sell alcohol. He contends the sale was lawful. The verdict of

not guilty as to the possession merely found that the defendant was not in unlawful possession, and guilty as to count 3 the jury found that he unlawfully sold. The verdict is not inconsistent, and is in harmony with the instructions given by the court, and is not out of harmony with *Rosenthal vs. U. S.* 276 Fed. 714, upon which the defendant relies. The verdict merely finds that the defendant unlawfully sold what he lawfully possessed. The motions are denied.

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 2, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [15]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Sentence.

Comes now on this 19th day of June, 1922, the said defendant James H. Woods into open Court

for sentence and being informed by the court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises it is considered ordered and adjudged by the Court that the defendant is guilty of violating the National Prohibition Act and that he be punished by being imprisoned in the King County Jail, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of sixty days on count III of the information. And the said defendant James H. Woods is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, Vol. III, page 292. [16]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Petition for Writ of Error.

In the Above-entitled Court, and to the Honorable
JEREMIAH NETERER, Judge Thereof:

Comes now the above-named defendant, James H. Woods, and by his attorney, John F. Dore, respectfully shows that on the 10th day of May, 1922, a jury impanelled in the above-entitled court and cause returned a verdict finding the above-named defendant guilty of the indictment theretofore filed in the above-entitled court and cause; and thereafter, within the time limited by law, under the rules and order of this Court, the defendant moved for a new trial, which said motion was by the court overruled and an exception thereto allowed; and thereafter, on the 19th day of June, 1922, this defendant was by order and judgment and sentence of the above-entitled court in said cause sentenced as follows: 60 days in King County jail;

And, your petitioner herein, feeling himself aggrieved by said verdict and the judgment and sentence of the Court herein as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petitions this Court for an order [17] allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that the said proceedings as herein recited, and as more fully set

forth in the assignments of error presented herein, may be reviewed and the manifest error appearing upon the face of the record of said proceedings and upon the trial of said cause, may be by said Circuit Court of Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by law and ruling of the court provided; and wherefore, premises considered, your petitioner prats that a writ of error issue to the end that said proceedings of the District Court of the United States for the Western District of Washington may be reviewed and corrected, the said errors in said record being herewith assigned and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination, said defendant be admitted to bail.

JOHN F. DORE,

Attorney for Petitioner, Plaintiff in Error.

Acceptance of service of within petition acknowledged this 20th day of June, 1922.

THOS. P. REVELLE,

Attorney for Plaintiff.

By E. D. DUTTON.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 19, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Assignments of Error.

Comes now the above-named defendant, James H. Woods, and in connection with his petition for writ of error in this cause, submitted and filed herewith, assigns the following errors which the defendant avers and says occurred in the proceedings and at the trial in the above-entitled cause, and in the above-entitled court, and upon which he relies to reverse, set aside and correct the judgment and sentence entered herein, and says that there is manifest error appearing upon the face of the record and in the proceedings, in this:

I.

The Court erred in overruling the motion for new trial herein.

II.

The Court erred in overruling the motion in arrest of judgment herein.

III.

The Court erred in failing to set aside the verdict

rendered in this cause, for the reason that the said is inconsistent in that the defendant was by the verdict found guilty of selling liquor which the jury found by their verdict that he did not possess with intent to sell. [19]

IV.

The Court erred in taking charge of the trial in the presence of the jury, calling witnesses himself and interrogating them.

V.

The Court erred in overruling the motion for directed verdict at the close of the Government's case and at the close of the defendant's case, for the reason that it appeared at that time the prosecution's testimony was largely perjured and that the prosecution was the result of a "frame-up" and it was error to permit the verdict to stand on such testimony.

VI.

The Court erred in taking charge of the trial and eliciting from the witness Stites the statement that a bonus was paid to the police department for obtaining evidence against places wherein the proprietor had been on trial before and acquitted, and eliciting the statement from the witness that the defendant Woods had been tried before and acquitted.

VII.

The Court erred in calling the witness Anderson to the stand and inquiring what a "bonus" was and eliciting from said witnesses that a "bonus" was an amount paid to secure the conviction of a

person who was believed to have had police protection, the inference being that the defendant Woods was such a person.

VIII.

The Court erred in giving that part of his instructions wherein it was stated that some one had perjured himself in the case and that he had called the matter of Franzen's testimony to the attention of the District Attorney, and the discussion of this matter in the instructions was improper and highly prejudicial to the defendant. [20]

IX.

The Court erred during the trial in the investigation held in the presence of the jury as to the probability of Franzen's having himself committed perjury.

X.

Thereafter, and within the time limited by law and the order and rules of this court, said defendant moved for a new trial, which said motion was overruled by the Court, and an exception allowed, which ruling of the Court the defendant now assigns as error.

XI.

Thereafter, and within the time limited by law, the defendant moved the Court that judgment and sentence upon the verdict rendered in the above-entitled cause be arrested and stayed, which motion was overruled by the Court and an exception allowed the defendant, and the defendant now assigns as error the overruling of said motion.

XII.

The Court erred in overruling the motion in arrest of judgment entered herein.

XIII.

The Court thereafter entered judgment and sentence against said defendant, upon the verdict of guilty rendered upon said indictment, to which ruling and judgment and sentence the defendant excepted, and now the defendant assigns as error that the Court so entered judgment and sentence upon the verdict.

And as to each and every of said assignments of error, as aforesaid, the defendant says that at the time of making of the order or ruling of the Court complained of, the defendant duly excepted and was allowed an exception wherever the same appears in the record to the ruling and order of the Court.

JOHN F. DORE,

Attorney for Defendant. [21]

Acceptance of service of within assignments of error acknowledged this 20th day of June, 1922.

THOS. P. REVELLE,

Attorney for Plaintiff.

By E. D. DUTTON.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 19, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

A writ of error is granted on this 19th day of June, 1922, and it is further ORDERED that, pending the review herein, said defendant, James H. Woods be admitted to bail, and that the amount of the supersedeas bond to be filed by said defendant be the sum of Ten Hundred Dollars.

And it is further ORDERED that, upon the said defendant's filing his bond in the aforesaid sum, to be approved by the clerk of this court, he shall be released from custody pending the determination of the writ of error herein assigned.

Done in open court, this 19th day of June, 1922.

JEREMIAH NETERER,

Judge.

Acceptance of service of within order acknowledged this 20th day of June, 1922.

THOS. P. REVELLE,

Attorney for Plaintiff.

By E. D. DUTTON.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 19, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Appeal and Bail Bond.

Know All Men by These Presents: That we, James H. Woods, as principal, and L. H. Fox and Anna Fox, of Seattle, King County, Washington, and James V. Pelletier and —————, of Seattle, King County, Washington, as sureties, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of One Thousand (\$1000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that, whereas the said defendant was, on the 19th day of June, 1922, sentenced in the above-entitled cause

to be confined for the period of sixty days in the King County Jail; and, whereas, the said defendant has sued out a writ of error from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit; and, whereas, the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of One Thousand (\$1000.00) Dollars;

Now, therefore, if the said defendant, James H. Woods, shall diligently prosecute his said writ of error to effect, and [24] shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made in the premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will rendered himself amenable to and obey any and all orders issued herein by said District Court, and shall, pursuant to any order issued by said District Court, surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obli-

gation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated, this 19th day of June, 1922.

JAMES H. WOODS. (Seal)

L. H. FOX. (Seal)

ANNA C. FOX. (Seal)

JAMES V. PELLETIER. (Seal)

6/24/22.

O. K.—CHAS. E. ALLEN,

. Assistant United States Attorney.

Approved:

NETERER,

Judge. [25]

United States of America,
State of Washington,
County of King,—ss.

L. H. Fox and Anna C. Fox, his wife, and James V. Pelletier, being first duly sworn, upon oath, each for himself and not one for the other, says:

I am a resident of the State of Washington, over the age of twenty-one years, and not an attorney or counselor at law, sheriff, clerk of the superior court, or other officer of such court, or of any other court; that I am worth, over and above all debts and liabilities, and exclusive of property exempt from execution, in real estate situate in King County, Washington, as follows: Said L. H. Fox—Lot 8, Blk. 15, Mt. Baker Park Add. \$8000—

Mort. \$1000. Said Pelletier—Lots 3 & 4, Blk. 48
Burns & Atkinson Add. to Green Lake. \$1200.

L. H. FOX.

ANNA C. FOX.

JAMES V. PELLETIER.

Subscribed and sworn to before me, this 19th
day of June, 1922.

[Notarial Seal]

F. C. REAGAN,

Notary Public in and for the State of Washing-
ton, Residing at Seattle.

[Indorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Jun. 24, 1922. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [26]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 6431.

JAMES H. WOODS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time to and Including July 14,
1922, to File Bill of Exceptions.**

For good cause shown, it is ORDERED that the
time for serving and filing the bill of exceptions
in this cause be and the same is hereby extended
until July 14, 1922.

Done in open court, this 29th day of June, 1922.

JEREMIAH NETERER,
Judge.

O. K.—THOS. P. REVELLE,
Attorney for Defendant in Error.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [27]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 6431.

JAMES H. WOODS,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

**Order Extending Time to and Including September
19, 1922, to File Record and Docket Cause.**

For good cause now shown, it is ORDERED that the time for filing the record in the above-entitled cause in the office of the clerk of the above-entitled court be and the same is hereby extended to and including the 19th day of September, 1922.

Done in open court, this 17th day of July, 1922.

EDWARD E. CUSHMAN,
Judge.

O. K.—THOS. P. REVELLE,
Attorney for Defendant in Error.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 17, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [28]

In the United States Court of Appeals for the Ninth Circuit.

No. 6431.

JAMES H. WOODS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to and Including November 1, 1922, to File Record and Docket Cause.

For good cause shown, it is ORDERED that the time for filing the record in the above-entitled cause in the office of the clerk of the above-entitled court be and the same is hereby extended to and including the 1st day of Nov., 1922.

Done in open court, this 18th day of September, 1922.

JEREMIAH NETERER,

Judge.

O. K.—CHAS. E. ALLEN,

Attorney for Defendant in Error.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Sep. 18, 1922. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [29]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on the 9th day of May, 1922, at the hour of ten o'clock A. M., the above-entitled cause came on regularly for trial in the above-entitled court before the Honorable Jeremiah Neterer, Judge thereof; the plaintiff appearing by Charles E. Allen, Assistant United States Attorney for said district, and the defendant being present in person and by his counsel, John F. Dore.

A jury having been regularly and duly impanelled and sworn to try the cause, and the Assistant United States Attorney having made a statement to the jury, the following evidence was thereupon offered:

Testimony of S. C. Bunker, for the Government.

S. C. BUNKER, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am and was a federal prohibition agent on December 2, 1921, and was present at the time of the arrest of the defendant, James H. Woods, in his drug-store in the Northern Hotel Building in Seattle, on December 2d. About ten o'clock at night we went down [30] to the Northern Drug Store, on First Avenue South. The man that we sent in there to buy alcohol gave the signal that he had purchased it, the police officer and myself went in the store, followed by Anderson, another police officer. The man's name that bought the liquor was Franzen, I believe; he was working for the Prosecuting Attorney's office. Franzen gave me two eight-ounce bottles of alcohol. He got them from the store; I got them off Mr. Franzen. A fellow named Stites was in the hotel, looking through the door into the drug-store. The defendant was behind the counter. I saw the two bottles now handed to me on the night of December 2d, in the drug-store of Mr. Woods. They are the bottles that Mr. Franzen handed me. I swallowed some of the liquid; it didn't hurt me, it burned. (Bottles marked for identification.) I saw Mr. Woods break a bottle of liquor; it was mopped off the floor. Woods was behind the

(Testimony of S. C. Bunker.)

counter when we came in, and he stepped behind the partition and picked up a bottle and threw it on the floor. That is a part of the bottle I picked up at that time.

(The piece of bottle here referred to admitted as Government's Exhibit —.)

Franzen had that glass in his hand. (Glass marked for identification.) The defendant made no statement that I can remember of. At the time of the raid two one-dollar bills, two silver dollars and two half-dollars were handed to Franzen. The money was found on the showcase under the little card stand about half way from the prescription booth to the front of the building. I picked up the two bills and the two dollars and the two half-dollars. The money was checked in my presence by Bowen and Anderson. (Money marked for identification.)

Cross-examination.

I did not take the money out of Franzen's hands. I did not ask Franzen to come in and testify falsely that I found the money on the counter. I deny that I have since this transaction [31] asked Franzen to come in here and deny that I took the money out of Franzen's hand. I saw no transaction between Woods and Franzen. I didn't see Woods sell anybody anything. I didn't see Woods give anybody any money. Bowen didn't carry the bottle of whiskey in with him.

Testimony of R. Bowen, for the Government.

R. BOWEN, a witness appearing in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

I was present in the Northern Drug Company, in the Northern Hotel, at the time of the arrest of James H. Woods on December 2, 1921. It was ten o'clock at night. Mr. Bunker and I went into the store, I in the lead, upon receiving the signal. I went right straight to the back of the drug-store and started to go underneath the counter, and as I was just coming up I saw a bottle in the air. I went in the back and Mr. Woods was in there, and I gathered up the liquor that was lying on the floor and put in another bottle and put it in my pocket, and also saved the glass. That is the piece of bottle I picked up. Franzen came in then from the outside, and he said, "There is the money now, on the counter." And Mr. Woods said, "You put it there," or words to that effect, and I believe Bunker got the money. I am not sure of that. The money, I believe, was two one-dollar bills, two silver dollars and two half-dollars. It was passed to me and I put it in my coat pocket. I marked the money and took the numbers off. I have the number of the paper dollars, and the half-dollars are the same. That is the money I took from defendant's place of business that night. I made the record about nine forty-five or ten o'clock that

(Testimony of R. Bowen.)

night, before the agent entered the store. Bunker handed me those two bottles that night in the defendant's store. Woods and some other man and four [32] police officers and one Federal officer were there. The agent had a serving glass in his hand when I walked in. He laid it down on the counter when I got to him. Bunker took charge of him and I went back to the prescription counter. I found the broken neck of a bottle on the floor. (Broken neck of bottle offered for identification.)

Cross-examination.

I did not see anybody break the bottle; I saw it in the air and then I heard the crash. I did not see the money at all until after it was handed to me. Woods said, "If there is any money on the counter, you put it there," referring to the agent.

Testimony of F. Semple, for the Government.

F. SEMPLE, a witness appearing on behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

I am a police officer and was such on December 2, 1921. I was in the drug-store of James H. Woods at the time of the arrest. There was some money given to the agent. I can't tell what it was. I examined the agent roughly on the outside to see if he had any liquor. Officer Bowen felt the outside of his clothing; he had no liquor on his person. I know there was some paper money given to the

(Testimony of F. Semple.)

agent, that is all I know. Bunker took two bottles off the agent. I made the agent sit down on a box in the corner, and he pointed over to a glass similar to that one that was on the counter, which he said he had drunk out of. I think the agent's name was Franzen. Woods was behind the counter. The bottles shown me now are similar to the bottles that Franzen gave Bunker. He handed one to Bunker and Bunker took one off him in my presence. Franzen said, "There is the money on the showcase; it was lying on the glass showcase. I was about ten feet away. I didn't see the bottle broken. [33]

Cross-examination.

The money was lying in plain view on top of the glass case. As Franzen was taken in the front door, he pointed and said, "There it is. Mr. Woods put it there now." Franzen said that Woods had put it on top of the glass showcase. I believe Anderson picked it up, either Anderson or Bowen. I didn't see any sale made.

Testimony of A. G. Anderson, for the Government.

A. G. ANDERSON, a witness appearing on behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

I am and was a police officer of the City of Seattle on December 2, 1921. I was present in the drug-store of the Northern Drug Company when the defendant James H. Woods was arrested on

(Testimony of A. G. Anderson.)

the same day. In the party besides myself were Federal Prohibition Officer Bunker, Mr. Bowen, and Bolter and Semple. We sent Franzen in to attempt to buy some alcohol. Bowen and Bunker went in first and I came last. Franzen was searched before he went into the drug-store. No bottles or anything was found on him. Bunker carried two bottles to the station and gave them to me. I saw them in the drug-store that night and cut the corks off so I would recognize them. I first saw them when Bunker got them from Franzen. I didn't see any bottle of whiskey broken. I saw some whiskey on the floor with a broken bottle on the floor. I saw a serving glass sitting on the counter. Franzen had been given a couple of marked bills and some silver before he went in, and notes were made by Bowen in my presence. I took a taste of the liquor down there, it was fit for beverage purposes. I didn't hear the defendant make any statement.

Cross-examination.

I didn't see any money lying on the counter; I was behind [34] the counter looking for it. I didn't see anybody break a bottle. There was possibly half a minute between my arrival in the drug-store and the other members of the party. Bunker searched Franzen. I felt him over on the outside. I couldn't say whether he had an overcoat on or not.

(Testimony of A. Franzen.)

Redirect Examination.

The money was slid around a three-cornered display sign, possibly fifteen feet from the broken bottle, and twelve feet from the cash register.

Testimony of A. Franzen, for the Government.

A. FRANZEN, a witness appearing on behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

On December 2, 1921, I was referred to as a stool-pigeon, employed by the Prosecuting Attorney. On December 2, 1921, I went to James H. Woods' drug-store, at the Northern Hotel Building, known as the Northern Drug Company. I was there first about seven o'clock in the evening. I walked in and asked Mr. Woods if he had any alcohol. When I finished asking him the question, a policeman in uniform walked out from behind the counter, and I stepped outside. Later I walked back in and asked Woods if he had any alcohol for a spirit compass, and he said he had. I bought a small bottle of alcohol, about eight ounces. I believe I paid a dollar for it. There was a man in a brown coat, I presumed a customer, standing there. I did not tell the defendant I had some grape juice and wanted something to put a kick in it. After I left the defendant's drug-store I walked on Washington Street just south of First Avenue, and then on up about twenty minutes after to the dry squad room. I returned to this drug-store about ten

(Testimony of A. Franzen.)

o'clock that evening. I walked in and asked [35] Mr. Woods if I could get some more of the same kind of alcohol, and he said yes. Woods gave me two bottles of alcohol, and the officers rushed in and grabbed me and took two bottles of alcohol from my hip pocket. The bottles are similar to the bottles now shown me. The bottles now shown me are not the bottles that I bought from Mr. Woods. The bottles were about that size, but they are not the same. I did not see a glass of that size. I did see a small glass. I asked Woods to give me something to stop the pain of Spastic Colytis that I have suffered from for some time. It was a frosted glass he gave me. As soon as Bunker took the bottles from my pocket Semple put the handcuff on my left hand and set me on a box and the officers searched the till and Mr. Woods. The officers said, "We will have to search him," and they took some paper money from Woods, I don't remember the amount, and then they got mad when they couldn't find any money on Woods and couldn't find any money in the till, and Anderson, the policeman took me outside roughly and took the handcuff off and asked me where the money was and I said I didn't know. Then he walked into the drug-store again and I followed him in and turned my right hand up, like that, and gave the money to Bunker, rolled up in that position. I handed the money to Bunker and they told me to beat it and to keep going. I didn't say, "There is the money right there behind the showcase." I had

(Testimony of A. Franzen.)

the money in my hand all the time. I said, "Here is the money," and put it in Bunker's hand. I saw no bottle break. I did hear something break. There was a noise in the prescription room of broken glass, but what it was I couldn't say, but it was occasioned by one of the officers running underneath and trying to go through a little trap door. He caught his shoulders and shoved the matchwood partition, and whatever fell down I don't know, but I heard the crash. I didn't see the officers mop anything up off the floor. I was sitting in the corner and they were in the prescription room. I have not been a friend of Mr. Woods. I knew of Mr. Woods, I know so many [36] Alaskans that know Mr. Woods, and have heard quite a lot from the police officers about him. The police sent me down there to try to trap Woods and trick him and frame him. They told me to go down there and knock him over; that he was no good. The money was given to me up in the dry squad room, I believe Bunker gave me the money. I made a buy but not with this money. The money never was out of my hand. I drank nothing out of the bottle I got from him. I did not give Woods any money; I went in and asked for alcohol, and got it. The police rushed in too quick. I had the money in my hand and the money never left my hand.

Cross-examination.

I went down there and asked Woods for some alcohol for a spirit compass early in the evening.

(Testimony of A. Franzen.)

I believe Woods put something in the alcohol. Woods held one bottle in his hand and another bottle in his other hand. What he done I could not say. One of the bottles was the bottle he gave to me. He took one bottle and poured something in it. I told him I wanted it for a spirit compass, and wanted it straight on account of the weather being cold and freezing compasses in Alaska. The money that is in court I gave to Bunker out of my hand. It never left my hand until I handed it to Bunker. After we got back to the dry squad room I said, "Woods didn't get the money," and Bunker said, "I know that, but you have to say he did so we can stick him. We won't be able to stick him unless you do." The bottles I got from Woods that day I have them with me now. (The bottles marked for identification Defendant's Exhibits "A," "B" and "C.") I never saw any but three bottles that day in the drug-store. These are the three bottles that I bought there that day. They are in the same condition as when I bought them, except the liquor has been emptied out. I told Mr. Allen in February that I had emptied the liquor out, and that the bottles they had as evidence were not the ones I got. Mr. Allen sent for me on the 13th of February, and I told [37] him then that I would not stand for any framing up of Woods and unless I could testify truthfully I would be a better witness for the defense than I would for the prosecution, that they had tried to make me testify the way they wanted it. I told

(Testimony of A. Franzen.)

them I had three empty bottles at home, and the bottles at home were the ones I bought from Woods and the ones the dry squad had were not the ones I bought from Woods. When I bought them I made a jocular remark about sailors drinking the spirits out of compasses, and Woods said, "If they drink that it will be the last they will drink." He said that when he sold it to me. Early that evening, I was waiting for a man named Stites—I was told to work under Stites—Anderson said to me, "Do you know Jimmie Woods?" I said, "No." The name didn't strike me at the time. He said, "Do you know the Northern Drug Store?" I said, "Yes." He said, "I want you to go down there and make a buy from that son-of-a-B. He got Keefe and I want to get him before he gets me." Keefe was one of the dry squad. Nobody searched me before I entered the drug-store. I was never searched while I was in the employ of the authorities, this night or any other time. The second time I was in the drug-store I never gave any money to Woods. The bottle broken on the floor was broken by Bowen or Bolton, I am not sure. I was in the drug-store alone when I bought the first bottle for the spirit compass. I brought it back to the dry squad room but did not turn it in. I have had it in my possession ever since. I was travelling a good bit between here and British Columbia, and when I returned home here the last time and when I had read of some little children being poisoned here with Epsom salts, I took these

(Testimony of A. Franzen.)

bottles and whatever packages of salts we had and destroyed all of it on account of having those little children at home. The youngest is not quite six. I have six children at home. These three bottles are the only ones I got from Woods' drug-store that day. I poured the liquor out the same time I poured out the Epsom salts. I have suffered for some [38] time with Spastic Colytis, and I asked Woods if he had something I could take for stomach convulsions, and he mixed up something, I didn't know what it was, but it had the effect of settling the stomach. In the District Attorney's office yesterday, Mr. Allen asked who was the leader, who had started this trial, and Anderson spoke up and said he guessed he was, and when he had got a little further along in his testimony and came to me being searched, I asked Mr. Allen not to pay any attention to Anderson, that he was committing perjury, that I had not been searched. We had a few words over it and I refused to say anything further in there and told Allen to let me see the affidavit that I had signed but had never read. I made notes of that on the back. After they couldn't get anything out of me to compare with the testimony of the police officers, I said I would like to be excused. Allen said, "Can't you fellows get together in an amiable way and bring this thing out?" He said he had a good case against Woods if we would all come in and tell the same tale. It is my experience that they frame testimony in these cases right along. I have a

(Testimony of A. Franzen.)

book here that I bought when I went to work for the dry squad, with certain places I was told to knock over. I was told they were no good and I marked them so. I was offered a bonus for giving testimony to convict Woods. I was paid twenty dollars for it and Stites grabbed five of it. I got twenty-five dollars bonus, and Stites got five of it. Lt. Haig of the dry squad gave me ten dollars as a bonus, and probably two or three weeks after the raid Stites came and pulled out two five-dollar bills and said that patrolman Keefe had given him ten dollars, and handed me five. When I came back from British Columbia, probably a month after that, Keefe said, "How much do I owe you, ten?" And I said, "No, five." I got twenty dollars bonus in addition to my salary and they gave Stites ten dollars. I was only on the job a few days. I quit because I wouldn't stand to work at that class of work—to frame people. I [39] worked fourteen days. I never drank out of a glass like that down at Woods' place. I told the prosecuting attorney that the bottles I purchased from Woods were at home and that I had poured out the contents. I told Mr. Allen that it was a frame-up and told him the bottles I purchased from Woods were at home.

Redirect Examination.

I got twenty dollars bonus to testify against Woods.

Mr. ALLEN.—Q. Now, in your conversation with me, isn't it true that my remark was something

(Testimony of A. Franzen.)

about you fellows letting your personal differences go aside and testify here in the ordinary manner?

A. That was a part of the statement.

Q. Wasn't that the extent?

A. And get together on the evidence.

Q. Wasn't it the understanding you were to drop your personal differences?

A. Your statement on both occasions to get together and bring this thing out—get the evidence straightened out. (St., pp. 48, 49.) I bought eight ounces of alcohol for a spirit compass the first time I went to Woods' store that day.

Q. This is an eight ounce bottle?

A. Yes, sir.

Q. Did you ever see a compass in your life that held anywhere near that much?

A. Yes. You take a compass and turn it over on its side and take the cap screw out and fill it up until there is no bubble left, and put the screw back in again.

Q. How does it come when the officers searched you in the drug-store there and sat you down on the box they didn't take this off your person?

Mr. DORE.—I object to that as incompetent, irrelevant and immaterial.

The COURT.—That is a matter of argument.
[40]

Q. You told me you poured the liquor in the gutter in front of your house?

A. I said the back of the house.

Q. Why did you pour it out?

(Testimony of A. Franzen.)

A. On account of the children being poisoned. I have the little ones around there that do all the housework, on account of my wife being an invalid and about to become a mother. The little children clean up the shelves and do all the housework, and I got rid of all the poisons we had.

Mr. ALLEN.—Now, if your Honor please, I would like to offer in evidence the affidavit this man signed on December 3d.

Mr. DORE.—I object to it as incompetent, irrelevant and immaterial.

The COURT.—You may ask about that on re-direct.

Mr. DORE.—He has already testified to that, if your Honor please.

Q. Did you, in my office, sign an affidavit in this case on December 3d?

A. I signed a paper. I didn't know what it was.

Q. Yet, when you were in my office the other day, you told me it was the truth?

A. I don't recall of that taking place. I told you I had signed a paper I had never read in the Clerk of the Court's office.

Q. You read it over yourself, or it was read to you, and you said it was true?

A. You said, "You have to stand by this."

Q. I ask you if you now denied this affidavit.

A. I don't deny the affidavit I signed; what it says I couldn't say.

Q. It states the truth? A. I couldn't say.

Mr. DORE.—He never read it. Don't be silly.

(Testimony of A. Franzen.)

Mr. ALLEN.—May it please your Honor, I object to the personal remarks of counsel. [41]

Q. When did you sign it?

A. I signed the paper on the morning of the 3d, about 12 noon.

Q. Now, refreshing your memory, Mr. Franzen, didn't you sign—isn't this what the affidavit contained: "Arvid Franzen being first duly sworn, on oath deposes and says that on December 2, 1921, at the City of Seattle, in the Northern Division, Western District of Washington, he purchased from one James H. Woods, who was then and there the proprietor and owner of the Northern Drug Company, located at 115 First Avenue South in the City of Seattle, eight ounces of intoxicating liquor known as distilled spirits; that he paid the said James H. Woods one dollar for the same—"

A. I testified to that?

Q. That is right? A. I testified to that.

Q. You swore to that; is that true?

A. I just testified to it.

Q. That is true?

A. I presume it is. I testified that.

Q. "That thereafter and subsequent thereto and on the same day the affiant purchased from the said James H. Woods two eight-ounce bottles of intoxicating liquor known as distilled spirits, for which he paid the sum of \$2.50."

Mr. DORE.—I object to that, if your Honor please.

Mr. ALLEN.—It is refreshing his memory.

(Testimony of A. Franzen.)

The COURT.—He may answer.

Q. Isn't that right?

A. I didn't prepare that affidavit.

The COURT.—Just answer the question.

A. Well, it is a hard question to answer. I didn't—

Q. Didn't you swear to that affidavit before the Clerk of this Court? A. Yes, sir. [42]

Q. It speaks the truth, doesn't it? A. No.

Mr. DORE.—I object to this as argumentative. I have an objection to that question.

A. That affidavit was prepared by Bunker before I came down town in the morning of the 3d, and he rushed me with it, and when I signed it, he took it away from me.

Q. Were you present when it was prepared?

A. No, sir.

Q. How do you know it was prepared by Mr. Bunker?

A. He was standing in the room there, and took it from the stenographer.

Q. You were not present at all there.

A. Not until it was handed to Bunker, and I asked the young lady to put my correct name on top, and when she made the correction with the typewriter, I started to read it, and upon doing so, Bunker snatched it away from her and started right out to the Clerk of the Court. I had signed this. When I got outside, he began to kind of abuse me and said, "If you don't appear at this

(Testimony of A. Franzen.)

trial, we will know you got the money. We want to keep this paper. We want to get that son-of-a-B."

Q. There is a lot of ill feeling between you and these officers, isn't there?

Mr. DORE.—That wouldn't make any difference.

Mr. ALLEN.—It goes to his motive.

The COURT.—That has already been covered.

Q. Now, refreshing your memory a little further: "That at said time and place, the said James H. Woods—"

A. I tell you I don't know about that.

Q. You knew this was an affidavit, didn't you?

A. No, sir.

Q. In my office, I called your attention to it and read it to you, [43] and asked you if it was true?

A. You didn't read it to me, Mr. Allen. You refused to let me read it.

Q. The first time you came into my office—

A. You tried to smooth me over, and told me to testify.

Q. I asked you to forget your personal differences; that they had no place in this case?

A. No, sir. You put it in the drawer. When I reached for it you put it in a drawer, and turned over some other papers so I couldn't see anything. That was on the 13th day of February.

Q. Did I call your attention to the reason for it?

Q. This affidavit was read to you?

A. No, sir.

(Testimony of A. Franzen.)

Q. That is your signature?

A. It is. I don't deny that.

Q. And I read it to you, didn't I?

A. No, you did not. You have been antagonistic all along—

Testimony of A. B. Stites, for the Government.

A. B. STITES, a witness appearing on behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

I am and was on December 2, 1921, an investigator for the Prosecuting Attorney's office. I was present at the store of the defendant Woods at the time he was arrested. I saw Woods pass two bottles to Franzen and I saw Franzen pass over what I thought to be money for the bottles. I saw Woods smash a dark bottle on the floor. I saw Franzen take a drink from a glass. I saw these bottles taken off Franzen's person. I can't say there was any money found on the showcase. On the counter in the dry squad room two one-dollar bills, [44] two silver dollars and two half-dollars were handed to Franzen. I never saw the money any more until in the dry squad room after the arrest. I know of no feeling existing between the officers and Franzen.

Cross-examination.

I could not identify the bills. I gave Franzen the bonus for this. I gave him twenty dollars.

(Testimony of A. B. Stites.)

Franzen was working under me. I got twenty dollars from Capt. Haig; he gave me the bonus and I gave it to Franzen. I saw Woods smash a dark bottle on the floor. I have been an investigator for a year and a half; that is the only occupation I have. Franzen quit after the arrest of Woods. I phoned him twice and tried to get him to come down to work, but he said he didn't care for the job any more.

Redirect Examination.

Q. Now, Mr. Stites, with reference to the bonus. What was the arrangement down there as to this bonus?

Mr. DORE.—I object to that as incompetent, irrelevant and immaterial. He testified a bonus was paid.

The COURT.—Sustained as to the arrangement, but I would like to know what this bonus was given for.

A. Why, in this particular case, there were several—In this case, because Officer Keefe got beat, and—

The COURT.—What was the bonus given for?

A. I have to tell of one case of that—

Mr. DORE.—Some other case he wants to tell about.

A. Whenever they have beat them before, they have to offer a bonus to get that bootlegger.

The COURT.—I want to know what the bonus

(Testimony of A. B. Stites.)

was for, for the purpose of giving testimony to establish a fact which is not true?

A. No, sir, it was not.

Q. (By the COURT.) What was the object of the bonus? [45]

A. If he made a buy and got the information on this man, he got the bonus.

Q. (By the COURT.) If he didn't get it, what then? A. He was paid his regular salary.

Mr. DORE.—That is pretty bright.

WITNESS.—He was under pay anyway.

Q. (By Mr. DORE.) He was under what?

A. Five dollars a day.

Q. (By the COURT.) Then, if a man is convicted, then he gets more?

A. On this one buy, yes. On certain places there is a bonus on it. Ranges from five to twenty dollars.

Mr. ALLEN.—I would like to ask a leading question.

The COURT.—Proceed.

Q. (By Mr. ALLEN.) Mr. Stites, Mr. Franzen has drawn the bonus, hasn't he? ..

A. Sure, after we brought him down to the station.

Q. Is that all there was to it?

Mr. DORE.—This is cross-examination of his own witness.

Mr. ALLEN.—Counsel went into this question.

The COURT.—I have permitted you to go into

(Testimony of ——— Jacobson.)

it, and when you are through I asked him to see what this bonus was for. (St., pp. 61, 62.)

The COURT.—I want to make this observation: I think, in view of the testimony of this man Franzen upon the witness-stand to-day, that there is a matter here that ought to be examined into by the County grand jury, and a matter here that should, perhaps, get the attention of the Federal grand jury when it is convened. I wish that your office would see that this matter is called to the attention of Major Douglas, the county attorney, and I wish the jurors—the notes are being taken here—the testimony is taken in shorthand and this can be extended and transcribed, and the matter ought to have the [46] attention of the Federal grand jury, and I will so direct.

Mr. ALLEN.—Very well, it shall be done.

Mr. DORE.—I move, in the light of what has been disclosed, that the jury be instructed to return a verdict of not guilty on this case. A case should not be submitted to a jury in this court on this character of testimony. (St., p. 63.)

The COURT.—Has the Government rested?

Mr. ALLEN.—No, your Honor.

Testimony of ——— Jacobson, for the Government.

——— JACOBSON, a witness appearing on behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

I am city chemist. I have had seventeen years'

(Testimony of ————— Jacobson.)

experience in examining liquor. I examined the alcoholic contents of this bottle. It contains seventy-nine per cent of alcohol. It is fit for beverage purposes. (Whereupon it was admitted as Government's Exhibit —.) The alcoholic contents of the bottle labelled "Washings" contained thirty-nine per cent. It could have been used for beverage purposes.

Testimony of O. R. Bolton, for the Government.

O. R. BOLTON, a witness appearing on behalf of the Government, having been duly sworn, testified as follows:

Direct Examination.

I am and was a police officer on December 2, 1921. I was at the place of business of the defendant James H. Woods at ten o'clock that evening with the other officers. I went back of the prescription counter and saw the officers mopping up a bottle of whiskey. Woods walked up towards the front of the store. [47] Franzen was in the store at that time. I saw two bottles taken from him; the bottles were similar to those bottles.

Q. I will ask you to examine these, and see if those are the bottles, as far as you know?

A. Yes, sir. They looked like, or very similar to those bottles. They are the same, because we have got the—

Q. Did you see this bottle that night?

A. I did.

Q. What is that?

(Testimony of O. R. Bolton.)

A. It is a bottle of whiskey—that is the bottle that was broken.

Q. Did you see this bottle that night?

A. That is the stuff that was mopped up.

Q. Did you see it mopped up? A. I did.

Q. Did you see it put in this bottle?

A. I did, yes, sir.

Q. Did you see some money on the showcase, or at any time down there when you came in?

A. I did.

Q. Where was it?

A. It was up towards the front of the store, right where the defendant was standing—had been standing—just about the time he left I believe,—left that spot—this—I can't think of his name—the agent—started to go out, and he turned around and came back and said "Right there is the money." He knew we were looking for it.

Q. Who said that? A. Franzen, the agent.

Q. What is his name?

A. Franzen, or Francis.

Q. Did you see the money, yourself, lying on the showcase? A. I did. [48]

Government rests.

The COURT.—Mr. Bolton, did you get a bonus to come in and testify? A. Absolutely not.

The COURT.—In this case? A. No, sir.

The COURT.—That is all.

Mr. ALLEN.—I think Mr. Morrow from the Prosecuting Attorney's office is here. He knows about this bonus arrangement.

(Testimony of A. G. Anderson.)

Mr. DORE.—I move, in the face of the evidence of these witnesses—it seems to me it would be an imposition on the jury to submit a case to the jury on this evidence.

The COURT.—I would like to have Mr. Anderson called in. (St., pp. 69, 70.)

**Testimony of A. G. Anderson, for the Government
(Recalled).**

A. G. ANDERSON, recalled by the Court, testified as follows:

(Questions by the COURT.)

Q. Something was said about a bonus that has been paid to some persons. Did you get a bonus?

A. No, sir.

Q. —to testify in this case—anything with relation to a bonus? A. No, sir.

Q. (By Mr. DORE.) You know the bonus is paid, don't you?

A. Lots of times money is paid these fellows extra for getting places that is noted for being protected by the police.

Q. Haig pays them extra for getting places noted for being protected by the police?

A. Yes, sir. (St., p. 70.)

Q. (By Mr. ALLEN.) Mr. Anderson, does that have relation to your testimony, or your work as investigator?

A. We don't have anything to do with those bonuses.

(Testimony of A. B. Stites.)

Q. (By Mr. DORE.) This bonus matter you have mentioned— [49]

The COURT.—This witness didn't testify anything with relation to it. I want to know. I wish to have Mr. Stites come back.

Testimony of A. B. Stites, for the Government (Recalled).

A. B. STITES, recalled for further examination by direction of the Court, testified as follows:

(Questions by the COURT.)

Q. I want to ask you whether this bonus that you testified about a while ago, whether that obtains to the police officers? A. No, sir.

Q. To whom does it apply?

A. Why, the agent that made the buy there.

Q. Just to him and to him alone?

A. To him alone.

Testimony of James H. Woods, in His Own Behalf.

JAMES H. WOODS, the defendant, having been duly sworn, testified as follows:

Direct Examination.

I have lived in Seattle thirty-two years, and was formerly deputy collector of United States Internal Revenue. I am sole proprietor of the Northern Drug Company. The bottles marked A, B and C, with poison labels on them I sold to the man Franzen. That formula number one is bichloride of mercury one part and alcohol two thousand parts; one of the formulas prescribed by the Government.

(Testimony of James H. Woods.)

They have poison labels on them required by the Government. Franzen never gave me five dollars. The first I ever saw of the bottle of whiskey was when it was picked up in the back room on the floor. It never belonged to me. When Policeman Bowen was down in Judge Dalton's courtroom, when he was being tried for extorting money from [50] Japs, he said he was sorry for having brought the bottle in. Bolton was being tried along with Bowen, and they told me they were sorry they brought the bottle into my place.

Cross-examination.

I sold Franzen two bottles at ten o'clock. I got five dollars from him for the two bottles. They searched my till for the money, and my person. They mopped something off the floor in my back room. I was out at the cash register at the time. Franzen said he wanted to buy alcohol for a compass. I have not talked to Franzen since they arrested me. I have not known him at all. I have never been convicted of a felony.

Redirect Examination.

You can't stand in the Northern Hotel and see the cash register in the Northern Drug Store. Franzen gave me five dollars for two bottles, and I put it in the cash register. It was never taken out of the cash register by anyone.

Defendant rests.

And, now, in furtherance of justice, and that right may be done, the said defendant, James

H. Woods, tenders and presents to the Court the foregoing as his bill of exceptions in the above-entitled cause, and prays that the same may be settled and allowed and signed and sealed by the Court and made a part of the record in this case.

JOHN F. DORE,
Attorney for Defendant. [51]

[Indorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division, as Proposed, Jul. 10, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

Filed in the United States District Court, Western District of Washington, Northern Division, as Settled, Oct. 5, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [52]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES H. WOODS,
Defendant.

Order Settling Bill of Exceptions.

The defendant, James H. Woods, having tendered and presented the foregoing as his bill of exceptions in this cause to the action of the Court, and in furtherance of justice and that right may

be done him, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court and made a part of the record herein; and the Court having considered said bill of exceptions and all objections and proposed amendments made thereto by the Government, and being now fully advised, does now in furtherance of justice and that right may be done the defendant, SIGN, SEAL, SETTLE and ALLOW said bill of exceptions as the bill of exceptions in this cause, and does ORDER that the same be made a part of the record herein.

The Court further certifies that each and all of the exceptions taken by the defendant, as shown in said bill of exceptions, were at the time the same were taken allowed by the Court.

The Court further certifies that said bill of exceptions contains all the material matters and evidence material to each and every assignment of error made by the defendant and tendered and filed in court in this cause with said bill of exceptions.

The Court further certifies that said bill of exceptions was filed and presented to the Court within the time provided by law [53] as extended by the orders of the Court heretofore made herein.

Done and ordered in open court, counsel for the Government and defendant being now present, this 5th day of October, 1922.

JEREMIAH NETERER,

Judge.

O. K.—CHAS. E. ALLEN,

Ass't U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Oct. 5, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [54]

United States District Court, Western District of
Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make a transcript of record on appeal to the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, and include therein the following:

Information and affidavit.

Plea.

Record of trial and impanelling jury.

Verdict.

Motion in arrest of judgment.

Motion for new trial.

Memorandum decision on motion for new trial and
in arrest of judgment.

Judgment and sentence.

Petition for writ of error.

Assignments of error.

Order allowing writ of error and fixing amount of bond.

Appeal and bail bond.

All orders extending time for filing bill of exceptions.

All orders extending time for filing record.

Bill of exceptions.

Order settling bill of exceptions.

Writ of error.

Citation.

Defendant's praecipe.

JOHN F. DORE,
Attorney for Defendant.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

JOHN F. DORE,
Attorney for Plaintiff in Error.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 6, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [55]

In the United States District Court for the Western District of Washington, Northern Division.

No. 6431.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. WOODS,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 55, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [56]

Clerk's fee, (Sec. 828, R. S. U. S.) for making record, certificate or return, 133 fo. at 15¢	\$19.95
Certificate of Clerk to transcript of record, 4 fo. at 15¢60
Seal to said certificate20

I hereby certify that the above cost for preparing and certifying record amounting to \$20.75 has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 17th day of October, 1922.

[Seal]

F. M. HARSHBERGER,

Clerk of the United States District Court Western District of Washington. [57]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 6431.

JAMES H. WOODS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to
the Honorable Judges of the District Court of
the United States for the Western District of
Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment, of a plea which is in
the said District Court before the Honorable Jere-
miah Neterer, one of you, between James H. Woods,
the plaintiff in error, and the United States of
America, the defendant in error, a manifest error
happened to the prejudice and great damage of the
said plaintiff in error, as by his complaint and pe-
tition herein appears, and we being willing that
error, if any hath been, should be duly corrected
and full and speedy justice done to the party afore-
said in this behalf, do command you, if judgment be
therein given, that then, under your seal, distinctly
and openly, you send the record and proceedings
with all things concerning the same, to the United

States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, together with this writ, so that you have the same at the said city of San Francisco within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, that the record [58] and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done in the premises.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 20th day of June, A. D. 1922, and of the Independence of the United States one hundred and forty-sixth.

[Seal]

F. M. HARSHBERGER,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division.

Service of the within and foregoing writ of error and receipt of a copy thereof is hereby admitted this 20th day of June, 1922.

THOS. P. REVELLE,

By E. D. DUTTON,

United States District Attorney for the Western District of Washington, Northern Division.

[59]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 20, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 6431.

JAMES H. WOODS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America,
to the United States of America, and to Thomas
P. Revelle, United States Attorney for the
Western District of Washington, Northern
Division, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit, at San Francisco, in
the State of California, within thirty days from
the date hereof, pursuant to a writ of error filed
in the clerk's office of the District Court of the
United States for the Western District of Wash-
ington, Northern Division, wherein the said James
H. Woods is plaintiff in error, and the United States
of America is defendant in error, to show cause, if
any there be, why judgment in the said writ of
error mentioned should not be corrected and speedy
justice should not be done to the parties in that
behalf.

WITNESS the Honorable JEREMIAH NET-
ERER, Judge of the District Court of the United
States for the Western District of Washington,
Northern Division, this 19th day of June, 1922.

JEREMIAH NETERER,
United States District Judge.

[Seal] F. M. HARSHBERGER,
Clerk of the District Court of the United States for
the Western District of Washington, Northern
Division. [60]

Service of the within citation and receipt of a
copy thereof is hereby admitted, this 20th day of
June, 1922.

THOS. P. REVELLE,
United States Attorney for the Western District
of Washington.

By E. D. DUTTON. [61]

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Jun. 19, 1922. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy.

[Endorsed]: No. 3991. United States Circuit
Court of Appeals for the Ninth Circuit. James H.
Woods, Plaintiff in Error, vs. The United States of
America, Defendant in Error. Transcript of Rec-
ord. Upon Writ of Error to the United States

District Court of the Western District of Washington, Northern Division.

Received October 20, 1922.

F. D. MONCKTON,
Clerk.

Filed March 12, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.